

Non-existence as a new institution of Czech law

Abstract

The aim of the thesis is to examine the institute of non-existence which is new in the Czech law. Therefore, the beginning of the thesis is arranged in order to make clear the chronological development of civil law in terms of wrongful conduct and/or wrongful legal act sanctions.

Historically, the General Civil Code (ABGB) is of particular relevance. ABGB was an important civil code not only on our territory but also in Austria and other countries of the former Habsburg Monarchy. While the original text of this Code sanctioned wrongful legal acts by invalidity (“*Ungültigkeit*”), the 1916 amendment introduced another term into the Code, taken from the German Civil Code (BGB), and namely “*Nichtigkeit*”. Although this term means “invalidity” as well, it was mistakenly translated into Czech by the word “nicotnost” (literally “nothingness” in English).

In the thesis, the legal situation in the period from 1948 till 2014 is discussed briefly, mentioning in particular the Family Act which, commencing from 1998, included, in addition to the term “invalidity” (of marriage), also the term “non-existence” (of marriage) stating that no marriage is formed in these cases.

The following part of the thesis deals with the applicable law. The problems of legal act, its elements, types of legal act and effectiveness of legal act are analysed at first. The subsequent main part of the thesis deals with non-existence.

Non-existence of legal acts is examined systematically according to the individual defects that cause it. Absence of will of the acting person is the first such defect, followed by absence of serious will and, finally, by indeterminateness and incomprehensibility of the manifestation of will. Detailed analyses of each of these defects are accompanied with theoretical considerations, sometimes far from being unanimous.

The next part of the thesis deals briefly with cases other than the above mentioned ones that also carry the sanction of non-existence. As these are 132 cases, they are discussed quite shortly.

The last chapter discusses canon law. It follows from the explanation that canon law regards the institute of invalid and apparent legal act similarly to Roman law and civil theory to ABGB. Canon law knows the institute of putative marriage as well; however, it means something quite specific although the word “putative” (“*domnělý*” in Czech) is similar to “non-

existing” (“neexistentní” in Czech as used in the Family Act and “zdánlivý” as used in the Civil Code).

Klíčová slova: non-existence, legal act, defects of legal act